THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, 3 June 2009

in Case No. 2008-43-0106

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Kristīne Krūma and Viktors Skudra,

based on the application of J. O. (hereinafter – the Applicant),

according to Article 85 of the Satversme [Constitution] of the Republic of Latvia and Article 16 (1), 6th indent, Article 17 (1), 11th indent and Article 19^2 of the Constitutional Court Law,

on 8 May 2009, in a Court hearing examined the case in writing

"On Compliance of the Words "Within Two Years Calculated from the Day when They Have Found out about the Circumstances that Preclude Paternity" of the Second Part of Section 156 of the Civil Law with Article 92 and Article 96 of the Satversme (Constitution) of the Republic of Latvia and Article 4 of the European Convention of the Legal Status of Children Born out of Wedlock".

The Facts

1. The question regarding parentage of a child, as well as its establishment in the Republic of Latvia is regulated by the section Family Law of the Civil Law

(hereinafter – the CL), as well as Chapter 30 of the Civil Procedure Law. Section 156 of the CL initially provided for the claims that the mother of a child born out of wedlock could make against the father of the child born out of wedlock, as well as it established the terms for brining an action in this respect.

By the Law "On Amendments and Supplementing of the Chapter "Family Law" of 1937 Civil Law" of 25 May 1993, the second part of Section 156 of the CL acquired the following wording:

"Paternity may be contested by the person who has acknowledged paternity, parents, if the person is dead, the trustee of the person if such person has been found to be lacking the capacity to act due to mental illness or mental deficiency, or by the mother of the child within two years calculated from the day when they have found out about the circumstances that preclude paternity. Children themselves may contest the acknowledgement of paternity within a two-year period after reaching legal age if their parents have died."

On 12 December 2002, the Saeima (Parliament) of the Republic of Latvia (hereinafter – the Saeima), by adopting the Law "Amendments to the Civil Law", excluded the words "parents, if the person is dead" from the second part of Section 156 of the Civil Law. Consequently, since 1 January 2003, when the abovementioned amendments came into force, the second part of Section 156 of the CL has the following wording:

"Paternity may be contested by the person who has acknowledged paternity, the trustee of the person if such person has been found to be lacking the capacity to act due to mental illness or mental deficiency, or by the mother of the child within two years calculated from the day when they have found out about the circumstances that preclude paternity. Children themselves may contest the acknowledgement of paternity within a two-year period after reaching legal age if their parents have died."

2. The Applicant contests, in its claim lodged at the Constitutional Court, compliance of the words "within two years calculated from the day when they have found out about the circumstances that preclude paternity" of the second part of Section 156 of the CL (hereinafter – the Contested Norm) with Article 92 and Article 96 of the Satversme of the Republic of Latvia (hereinafter – the Satversme), as

well as Article 4 of the European Convention of the Legal Status of Children Born out of Wedlock of 15 October 1975 (hereinafter – the Convention).

The Applicant indicates having lodged a statement of claim on contesting paternity at the Riga City Latgale Regional Court. The statement was supplemented by a request to appoint DNA expert examination to establish the biological birth fact of the child. The court rejected the request by justifying such decision by the fact that the term of two years established in the Contested Norm has expired.

The Civil Case Division of the Riga Regional Court rejected, in its decision of 4 October 2007, the appellation claim of the Applicant. The Department of Civil Cases of the Senate of the Supreme Court of the Republic of Latvia (hereinafter – the Senate) rejected, by its judgment of 11 June 2008, the cassation claim of the Applicant. The decisions were justified by the fact that the term established in the Contested Norm regarding bringing an action has expired.

The Applicant holds that the Contested Norm has been created with the purpose to confer a person, who has recognized paternity, the right to contest such recognition in the cases established by the Law. Namely, it gives the possibility to avoid parental rights and duties, as well as to establish termination of the rights and duties of a child regarding the person who contests paternity. The term of two years established in the Contested Norm is related not only with the legal status of a child but also to the right of the person who has contested paternity to address a court. Likewise, the abovementioned concerns the private life of the person.

By referring to judgments of the Constitutional Court and those of the European Court on Human Rights (hereinafter – the ECHR), the Applicant admits that the right to a fair court is not absolute and it can be restricted. However, any such restriction is admissible only insofar as the person is not debarred from the abovementioned right. Normative acts do not provide for an institution that would be entitled to collect evidence before proceedings to contest or prove paternity if the mother of a child object collecting such evidence.

It is necessary to assess the norms included in the Satversme in conjunction with Article 4 of the Convention. The abovementioned norm does not at all provide for any term, within which a person who is not the biological father of the child could contest paternity. Consequently, the Contested Norm is in breach of this norm of the

human rights binding on the Republic of Latvia.

Although the objective of the Contested Norm is to ensure stability of a family and interests of a child, it is still important for a man who is not the biological father of the child to have the right to contest paternity. This right is related with private life of a man, whilst the legal interests of the child are not paramount if compared with the right to private life of the man contesting paternity.

In the clarifications, the Applicant indicates that the interpretation of Article 4 of the Convention offered by the Saeima does not comply with the grammatical text of this article and it could rather be applied to the beginning of the first sentence of the abovementioned norm. Likewise, the reference of the Saeima to Article 8 of the UN Convention on the Rights of the Child is ungrounded.

The fact that the DNA expert examination to establish paternity is available in Latvia for a comparatively short period and it cost about 500 lats in 2004. This sum can be regarded as a considerable one if compared with the minimum monthly wage of that time.

Taking into consideration the aforesaid, the Applicant asks the Constitutional Court to recognize the Contested Norm as non-compliant with Article 92 and Article 96 of the Satversme, as well as with Article 4 of the Convention.

3. The institution that passed the Contested Act – the Saeima – does not agree with the arguments of the Applicant and asks the Constitutional Court to recognize the Contested Norm as ungrounded and to reject it.

Paternity of a child in cases if the child has been born out of wedlock or 306 days after divorce is grounded on voluntary recognition of paternity or establishment of it in court proceedings. In case of voluntary recognition of paternity, a person who considers being the father of the child, shall voluntarily go to the registry office, together with the mother of the child, and submit a joint application. In the cases established by law, an application on recognition of paternity can be submitted by the father of a child alone. However, if the child has reached the age of twelve, consent of the child is necessary to recognize paternity. Section 20 of the Law on Orphan's Court also provides for the cases when consent of the Orphan's Court is necessary for recognizing paternity.

Since the law does not restrict, by means of any terms, voluntary recognition of paternity, then the father of a child can recognize paternity at any time after the birth of a child or even prior to the birth in accordance with the second part of Section 155 of the CL. The Law does not stipulate that only such person who can prove the fact of biological paternity can recognize paternity of a child.

The aim of the procedure for contesting paternity is to prevent assumption of paternity regarding a man who is not the biological father of the child but is regarded the child's legal father. Assumption of paternity and recognition of paternity can be contested before a court.

When assessing compliance of the Contested Norm with the first sentence of Article 92 of the Satversme, the Saeima indicates that one of the requirements that reasonably restricts the rights to a fair court is the establishment of a time period for completion of procedural actions to ensure one of the principles of a law-governed state – judicial stability, which in the case under examination is apparent in ensuring priority of the rights of the child.

The Saeima does not agree with the interpretation of Article 4 of the Convention proposed by the Applicant. Namely, in the interpretive communication of the Council of Europe it has been indicated regarding contesting of paternity that national laws may provide for restriction of the right of persons to contest paternity in the form of terms. The State can establish groups of persons subject or not subject to such term. For instance, children are not subject to such term. The State can likewise provide for different time reference points for different persons, namely, the date when the term of contesting paternity shall be calculated. The objective of these provisions is to ensure the children with a stable legal situation and therefore these terms cannot be too long. Namely, the aim of these regulations is to ensure that the legal situation of a child would not depend on the persons who have the right to contest paternity and the possibilities of these persons to "change their opinion" regarding contesting of paternity.

Moreover, according to the interpretive communication of the Council of Europe, it is the responsibility of the national legislator to appoint persons or institutions that have the right to contest paternity.

Persons who have the right to contest paternity need certain time to

take the decision. In this period, they have to decide on their further activities and subsequently stick to this decision. Consequently, the legislator wants to prevent recurrent initiation of such case. Likewise, the legislator does not want to permit any uncertainty regarding the status of a child. The Saeima holds that the term of two years is appropriate for a person who has recognized paternity but has subsequently found out about circumstances excluding paternity to exercise the rights and bring an action before a court regarding contesting of paternity recognition.

When examining a particular case at the court, it is possible to establish the moment when the term for contesting of paternity established in the Contested Norm has set in. It is not possible to cover all cases and situation in the law. However, it does not fall within the jurisdiction of the Saeima and the Constitutional Court to reassess decisions taken in the particular civil cases.

Article 8 of the UN Convention on the Rights of the Child provides that States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Consequently, it is in child's interests to know his or her paternity. Undue delay could infringe the right of a child to establish his or her identity.

The ECHR has indicated that a child has the right to be provided, without unnecessary delay, with legal security regarding his or her identity. Moreover, the ECHR has indicated that there does not exist any universally applicable standard for ensuring paternity that the Member States should necessarily include into their legal acts.

The legislator has chosen a lenient restriction of the term for contesting paternity. In the case under consideration, the Contested Norm does not reject the Applicant the right to address a court, whilst it provides for a reasonable term for exercising these rights. In each particular case, the court assesses the particular date when the term established in the Contested Norm has set in.

Consequently, the restriction has been established by law, it has a legitimate objective – protection of the rights and interests of a child, and it is compliant with the legitimate objective. Consequently, the Contested Norm complies with the right to a

fair court established in the first sentence of Article 92 of the Satversme.

Moreover, the Saeima does not agree with the opinion of the Applicant that the Contested Norm infringes the right to private life and that in this case legal interests of a child are not paramount if compared with the private life of the father having contested paternity.

Referring to decisions of the ECHR and the Constitutional Court, the Saeima concludes that after the expiry of the term for contesting paternity, the interests of the child are paramount to the interest of the person deemed to be the father of the child to contest paternity previously recognized. Consequently, no infringement of the rights stipulated in Article 96 of the Satversme can be established. As it follows from the facts of the case, the Applicant had doubt about paternity of the child in 2004 already; however he has not taken any measures to contest paternity.

Taking into account the aforesaid, the Saeima asks the Court to reject the application and recognize the Contested Norm as compliant with the effective legal norms of higher force.

4. The summoned party – **the Ministry of Justice –** holds that the Contested Norm complies with Article 92 and Article 96 of the Satversme and with Article 4 of the Convention because it does not infringe the rights guaranteed to the Applicant by the abovementioned norms.

When assessing compliance of the Contested Norm with Article 4 of the Convention, the Ministry of Justice refers to the interpretive communication of the Council of Europe regarding contesting of paternity and indicates that it falls within the scope of competence of the national legislator to establish the term of two years, within which it is possible to contest paternity, and this term does not deny the rights to contest paternity on its merits.

When assessing compliance of the Contested Norm with the first sentence of Article 92 of the Satversme, the Ministry of Justice refers to judgments of the Constitutional Court and concludes that the right to a fair court can be restricted. One of the restrictions of the right to a fair court is establishment of a time period for completion of procedural actions, and the aim of such term is to ensure solving of the case within a reasonable time frame.

The legitimate objective of the Contested Norm is protection of the rights of a child. The Ministry of Justice holds that the term of two years established by the legislator is appropriate for leaching the legitimate objective. By referring to decisions of the ECHR, it is concluded that a child has the right to be provided, without undue delay, with legal security regarding his or her identity.

According to the Ministry of Justice, the term of two years is the most lenient term for contesting paternity previously recognized. In the legal acts of the Member States to the Convention do not provide for any generally applicable standard regarding ensuring paternity. Moreover, the legal acts provide for different date when the term for contesting paternity sets in.

Moreover, the Contested Norm does not deny the Applicant the rights to address the court. It only establishes the time frame when this right can be exercised. Consequently, the Contested Norm complies with the right to a fair court established in Article 92 of the Satversme.

When assessing compliance of the Contested Norm with Article 96 of the Satversme, the Ministry of Justice admits that the right of the Applicant to private life are not being infringed because in legal relations that involve a child, the rights and legal interests of the child are paramount. By referring to decisions of the ECHR it is concluded that, as soon as the term for contesting paternity expires, the priority shall be granted to the rights of the child rather that the interest of the Applicant to contest paternity previously recognized. This conclusion shall be applied in the cases when a person has known or had the reason to consider of not being the father of the child but has taken no measures to contest paternity within the established time frame, and the reasons for inactivity are not related with what has been established in normative acts. As it follows from the facts of the case, the Applicant had doubt about paternity of the child already in 2004; however he has not taken any measures to contest paternity. Consequently, infringement of the rights enshrined in Article 96 of the Satversme cannot be established.

The Ministry of Justice also indicates that even if the term for contesting paternity has expired, the Orphan's Court, according to Item 5 of Section 16 of the Law on Orphan's Court, has the right to lodge a statement of claim to the court in the child's interest. Such statement of claim shall be submitted with the view to ensure

the right of the child to individuality, as established in the second part of Article 8 of the Children's Rights Protection Law.

5. The summoned party – **the Ministry of Children, Family and Integration Affairs** – informs the Court that Article 4 of the Convention applies to the cases when paternity is being contested by a person who has previously recognized it on voluntary basis. However, it is necessary to take into consideration also the fact that the Convention does not establish any person or institution who would have the right to contest paternity. The Member State to the Convention is entitled to resolve on this issue in accordance with its law, and this is Section 156 of the CL that regulates this issue in the Republic of Latvia.

Article 4 of the Convention does not provide any term for contesting paternity. However, such term should not be too long and it should ensure a stable legal situation for the child. By referring to Article 8 of the UN Convention on the Rights of the Child and Section 8 of the Children's Rights Protection Law, it is concluded that knowing paternity is in child's interests.

Taking into account the aforesaid, the Ministry of Children, Family and Integration Affairs holds that the term of two years established in the Contested Norm is sufficient for a person to lodge a statement of claim at the court regarding contesting of paternity and to protect his legal interests.

6. The summoned party – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) indicates that one of the ways of recognizing paternity is voluntary acknowledgment of paternity. This is an unconditional transaction of family law that establishes kindred among the child and the father, as well as the relatives of the father. Therefore such acknowledgment cannot be linked with a certain period of time. This is characterised as irrevocable, irreversible and binding for all. However, as a transaction, it is subject to general provisions of transaction, and Section 156 of the CL provides for the possibility to recognize the transaction as void. The Contested Norm provides for a certain term, within which a person can exercise the rights to contest paternity previously recognized.

When assessing whether the Contested Norm breaches the right of

the Applicant to protection of rights and lawful interests at the court established in Article 92 of the Satversme and the right to inviolability of private life guaranteed in Article 96 of the Satversme, the Ombudsman indicates that the abovementioned rights can be restricted. The general aim of the term established in the Contested Norm is protection the right of a child to identity and to guarantee stability of legal status of a child. The legal situation of the child cannot depend on persons who have the right to contest paternity, as well as the possibilities of such persons to "change their opinion" regarding contesting of paternity.

According to the first part of Section 6 of the Children's Rights Protection Law, in legal actions which affect a child, the child's rights and interests shall be paramount. The principle of the priority of the rights and legal interests of a child shall also be applied when dealing with the issues of paternity. The Ombudsman holds that it is in child's interests to establish paternity and ensure stability of the entry of father at the registry office; therefore the actions taken by the legislator, namely, establishment of a certain term for contesting paternity previously contested, shall be supported.

When assessing compliance of the Contested Norm with Article 4 of the Convention, it can be concluded that this Article applies also to the cases when paternity is contested by a person who has previously recognized it on voluntary basis if the person who wants to recognize or has recognized paternity of the child is not his or her biological father. The explanatory report to the Convention neither establishes the scope or persons or authorities that would have the right to appeal or contest voluntary acknowledgment of paternity. The report neither provides for any term for contesting the recognition. In this respect, this is the duty of national legislator to decide, and it has the right to provide for the possibility to contest recognition of paternity by establishing respective range of persons, as well as it has the right to prohibit contesting paternity in certain cases with a view to protect and ensure the interests of a child. The right of the state to establish terms for contesting paternity follow from the objective of the Convention, the case-law of the ECHR, as well as from the documents published by the European Council that provide explanation of application of the Convention.

It follows from the documents of the Council of Europe that observance of the interests of a child is priority that would be taken into consideration

when dealing with paternity issue. First, it is most appropriate for the interests of a child if he or she knows the parents since the birth, and second if stability of a certain status is ensured.

The Ombudsman draws attention to the fact that it cannot be concluded from the facts of the case whether the Applicant has exhausted all remedies of right protection available in the State. Namely, it cannot be proved whether he has asked the Orphan's court to exercise the rights established in Item 5 of Section 16 of the Law on Orphan's Court to submit a statement of claim to the court.

Taking into account the aforesaid, the Ombudsman concludes that the Contested Norm complies with Article 92 and 96 of the Satversme and Article 4 of the Convention.

7. The summoned party – Dr.Iur. **Inese Lībiņa-Egner** – indicates that paternity is kindred relationship between the father and the child. The basis of paternity is biologic origin of a child from the father. However, in the area of family law it can also happen that the child has not originated biologically neither from the husband of his or her mother (supposition of presumption of paternity), nor from the person who has acknowledged paternity of voluntary basis. Therefore the legislator has provided for the possibility to contest, before a court, paternity that does exclude the fact of biological paternity.

Recognition of paternity is the way how a man can establish, by means of a personal and constitutive legal transaction, kindred between him as the father and his child. The Law does not restrict recognition of paternity by means of any terms or provisions Moreover, according to the opinion of legal certainty, acknowledgment of paternity is not possible only for a certain period of time. The Law does not provide for the duty of a man to provide actual evidence proving that the child has biologically originated from him prior to recognizing paternity. The factual assumption is based on the fact that the man who recognizes paternity of a child is the biological father of the child. However, provided the absence of such duty of proving the fact may, this can cause a situation when a man recognizes paternity of the child who has not originated from him. It is not possible to revoke acknowledgement of paternity. As paternity is recognized, relationships between the father and the child are established.

However, a man can recognize paternity in the result of mistake, fraud or duress, and therefore it is possible to contest recognition of paternity according to the procedure established in Section 156 of the LC.

The term of two years for contesting of acknowledgment of paternity recognized on voluntary basis, as established in the Contested Norm, that begins on the date when the person has found out about conditions that preclude paternity, serves as a reasonable balance between the rights of a child and those of the person who contests paternity previously recognized. Stability of paternity previously recognized regarding the importance of the interests of a child is particularly important.

Such term of two years is a substantive and preclusive term that cannot be renewed in accordance with the provisions of the Civil Procedure Law on renewal of procedural time periods. Therefore, in the case if the right of a person to contest paternity are not exercised within the term established in the Law, they can no more be exercised after the expiry of the term. With a view to protect the rights of the child, it can be concluded from the first and the second part of Section 156 of the CL that absence of biological kindred per se may not serve as sufficient grounds for a court to recognize acknowledgment of paternity as invalid. It is necessary for a man who contests his recognition of paternity to prove the fact that he has recognized paternity in the result of mistake, fraud or duress.

Freedom of action when determining persons and authorities having the right to recognize paternity, as provided for the state in Article 4 of the Convention, shall be interpreted as broadly as possible. In the case under review, Article 4 of the Convention permits to establish in the CL the term of two years, wherein a person having recognized paternity has the right to contest it. Otherwise, the right of the person to contest paternity previously recognized can become unrestricted, which would endanger legal security of the child.

Based on the aforesaid, I. Lībiņa-Egner holds that the term of two years is sufficient for a person who has recognized paternity but then found out about circumstances precluding it, to exercise the rights established in the Law.

The Constitutional Court has concluded:

8. The case was initiated on compliance of the words "within two years calculated from the day when they have found out about the circumstances that preclude paternity" of the second part of Section 156 of the CL with legal norms of higher legal force. However, the abovementioned words of the second part of Section 156 of the CL do not provide for any time period for completion of procedural actions, within which paternity recognized on voluntary basis can be contested in relation to - the mother and the person who has recognized paternity, as well as to the trustee of the abovementioned person. Consequently, the Constitutional Court, taking into consideration the extent of the claim, can assess compliance of the Contested Norm with legal norms of higher legal power insofar as it applies to procedural rights of the person having recognized paternity to contest acknowledgment of paternity within the time period established in the Contested Norm.

The Applicant holds that the term of two years for contesting paternity, as established in the Contested Norm, denies him the rights to a fair court on its merits. Although the constitutional claim contains a request to assess compliance of the Contested Norm with Article 92 of the Satversme, it still follows from the application that compliance of the Contested Norm with only the first sentence of Article 92 of the Satversme is contested. This part of Article 92 of the Satversme provides: "Everyone has the right to defend his or her rights and lawful interests in a fair court."

9. The Satversme does not directly provide for the cases when the right to a fair court could be restricted, however this right cannot be regarded as absolute (*see: Judgment of 4 January 2005 by the Constitutional Court, case No. 2004-16-01, Para 7.1*). Likewise, it is necessary to take into account the fact that the content of Article 92 of the Satversme shall be interpreted in conjunction with Article 89 of the Satversme that provides that "the State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia" because the aim of the legislator was to achieve mutual harmony between the international and national legal norms.

In cases, when there is doubt about the contents of the human rights

included in the Satversme, they should be interpreted in compliance with the practice of application of international norms of human rights (*see: Judgment of 30 August 2000 by the Constitutional Court in the case No 2000-03-01, Para 5 of the Concluding Part and Judgment of 22 October 2002 by the Constitutional Court in the case No 2002-04-03, Para 1 of the Concluding Part*).

The ECHR, when analysing Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – CPPHRFF), has indicated that the right to a fair court is not absolute and can be restricted. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired (*see, e.g.: Judgments of the ECHR in the following cases: Edificaciones March Gallego S.A. v. Spain, judgment of 19 February 1998, Reports 1998-I, para. 34; García Manibardo v. Spain, no. 38695/97, para. 36, ECHR 2000-II; Staroszczyk v. Poland, no. 59519/00, para. 125, 22 March 2007*).

It neither follows from Article 15 of the UN International Covenant on Civil and Political Rights that that the rights included therein could be regarded as absolute, and in certain cases they can be restricted [*see: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14): 13/04/84 CCPR General comment 13*].

Consequently, it follows from the decisions of the Constitutional Court and the ECHR, as well as the explanatory note to Section 14 the International Covenant on Civil and Political Rights that the right to address a court are not absolute and it can be restricted insofar as the abovementioned right is not denied on its terms.

One of the cases when the right to a fair court are restricted is established by the regulation of the law that provides for a certain time period for completion of procedural actions when exercising rights. The right to a fair court established in Article 92 of the Satversme are related with the principle of a law-governed state, where judicial stability is an essential constituent part of the principle of a law-governed State. To ensure judicial stability, it is possible to apply time periods determined for the completion of procedural actions, the objective of such term being ensuring of adjudication of a case within reasonable time period (*see: Judgment of 26*

November 2002 by the Constitutional Court in the case No 2002-09-01, Para 1 of the Concluding Part).

The Constitutional Court has indicated that the right to a fair court is one of the most significant rights of a person. Therefore restrictions to this right of a person shall be determined in the most indispensable cases (*see: Judgment of 14 March 2006 by the Constitutional Court in the case No 2005-18-01, Para 10*). The fundamental rights of a person, including the right to address a court, can be restricted only in the cases established in the Satversme if it is required by protection of the rights relevant for the interests of the society and if the principle of proportionality is being observed.

The Contested Norm establishes restriction of the right to a fair court, namely, the legislator has included therein a time period for completion of procedural actions, within which a person that has acknowledged paternity of voluntary basis has the right to contest the acknowledgment.

Consequently, it is necessary to assess whether the restriction of the rights included in the Contested Norm prohibiting a person to address a court after the expiry of the term of two years, firstly, has been established by law and, secondly, whether such restriction has a legitimate objective, and, thirdly, whether such restriction is compliant with the legitimate objective.

9.1. For the restriction to be admissible, it must comply with a law adopted according to proper proceedings. The Contested Norm is included into the CL. The Constitutional Court has no doubt and the case under review contains no materials that would testify that the Contested Norm cannot be regarded as adopted by law passed according to proper procedure. The Applicant, the Saeima and the summoned parties admit that the restriction has been established by law.

Consequently, there is no dispute regarding the fact that the Contested Norm has been established by a law passed and proclaimed according to proper procedures.

9.2. Circumstances and arguments why it is needed shall be the basis for any restriction of fundamental rights, namely, the restriction is determined because of significant interests – the legitimate aim (*see: Judgment of 22 December 2005 by the Constitutional Court in the case No 2005-19-01, Para 9, and Judgment of 14 March 2006 by the Constitutional Court in the case No 2005-18-01, Para 13*).

It can be concluded from the application that the Applicant mentions protection of the rights and legal interests of the child as the legitimate objective of the Contested Norm. The same legitimate objective is also mentioned by the Saeima and the summoned parties (*see: case materials, pp. 4, 84, 89, 97, 99 and 103*).

The Constitutional Court shares the opinion of the participants of the case and the summoned parties that protection of the legal interests of a child is the legitimate objective of the regulation regarding recognition of paternity. Protection of human rights in each society begins with that the society guarantees the rights of the child by ensuring them circumstances allowing them developing their potential to be better prepared for the life of an adult person (*see: Human Rights Fact Sheet No.10 Human Rights of the Child, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, UN Human Rights Fact Sheets, No. 1-25, 4th ed., Lund, 1996, p.160*).

This particularly concerns legal certainty of the identity of a child and serves as the grounds for further legal relations affecting a child. The UN Committe of the Rights of the Child has emphasized in particular the necessity to ensure protection of the rights of the child in early childhood. Protection of the rights of the child begins at birth when the child is being registered and gains identity, the right to health, education and social welfare (*see: General Comment No. 7 (2005): Implementing child rights in early childhood, Committee on the Rights of the Child, CRC/C/GC/7/Rev.1, 20 September 2006, paragraph 25*].

It also follows from the case-law of the ECHR that a child has the right to be ensured, without unnecessary delay, with legal certainty in legal relations regarding identity of a child (*see, e.g.: Judgment of the ECHR in the following cases: Rasmussen v. Denmark, judgment of 21 November 1984, Series A no. 87, p. 15, para. 41; Mikulić v. Croatia, no. 53176/99, para. 65, ECHR 2002-I; Mizzi v. Malta, no. 26111/02, para. 83, ECHR 2006).* The term included into the Contested Norm ensures stability of legal relations and approximates, as far as possible, the legal state of the child born out of wedlock to the legal state of a child born in wedlock. The aim of the term established for contesting of paternity acknowledged on voluntary basis is to ensure that the legal situation would not depend on person who have the right to contest paternity and he possibilities of these persons "to change their opinion" regarding contesting of paternity (*see: „White Paper" On Principles Concerning the*

Establishment and Legal Consequences of Parentage, Committee of experts on Family Law (CJ-FA) of the Council of Europe, 15.01.2002., principle 13: http://www.coe.int/family]. The Senate has also recognized that the term of two years facilitates protection of the legal interests of a child born out of wedlock and approximates his legal status with that of a child born in wedlock (*see: case materials, pp. 94 and 95*).

It can be concluded from the aforesaid that, to ensure the right of the child to identity, it is necessary to ensure legal certainty, and, to reach this objective, a term for contesting paternity can be established.

Consequently, the restriction of the fundamental rights has a legitimate objective – protection of the rights of the child, and it complies with the case established in Article 116 of the Satversme when the rights of other persons may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people.

9.3. The principle of proportionality requires observing a reasonable balance between the interests of the society and those of a person if the public power restricts the rights and legal interests of a person. Consequently, it is necessary to assess whether a balance between the rights of a person to contest paternity recognized on voluntary basis in the time period of two years beginning from the moment when he or she has found out about circumstances precluding paternity, on the one hand, and the duty of the State to ensure protection of the rights and legal interests of a child, on the other hand, has been ensured.

To establish whether, when adopting the Contested Norm, the legislator has or has not infringed the principle of proportionality, it is necessary to investigate whether the mechanism of protection of the rights of the child created by means of this Norm can be regarded as the one that restrict, in a non-proportional manner, the rights of the person who has recognized paternity of voluntary basis but later has decided to contest this recognition. Namely, it is necessary to assess whether the legislator, when establishing the term of two years, has achieved a proportional balance between the abovementioned rights.

The duty of the State to protect the rights of the child, as established in Article 110 of the Satversme, is provided in details in the Children's Rights

Protection Law. The first part of Section 6 thereof provides that in legal actions which effect a child, the child's rights and interests shall be paramount. The second part of the same Section provides that "All activities regarding a child, regardless of which are performed by the state or local government institutions, public organisations or other physical and legal persons which are occupied with taking care about the child and his/her upbringing, as well as courts and other rights protection institutions, shall ensure the priority of the child's interests."

The Constitutional Court has concluded that the following principle follows from the aforesaid: in legal relationships, concerning the child, in all the activities the rights and interests of the child shall prevail. It means that not only the courts and other institutions shall adopt their decisions on the basis of the interests of the child, but the legislator has also to observe it, so that the adopted or amended normative acts would protect the interests of the child in the best possible way (*see: Judgment of 11 October 2004 by the Constitutional Court in the case No 2004-02-0106, Para 11*).

Likewise, the following conclusion follows from the Preamble and the first part of Section 3 of the UN Convention of the Rights of the Child: The rights of the child shall be conferred a greater legal protection and the State activities regarding legislation should be guided towards best protection possible of the interests of the child. It has already established in the UN Declaration on the Rights of the Child that was adopted in 1959 that certain human rights have a special role regarding children because they reflect the necessity for special care and attention for them, violability of children and differences between their world and that of an adult person (*see: Human Rights Fact Sheet No.10 Human Rights of the Child, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, UN Human Rights Fact Sheets, No. 1-25, 4th ed., Lund, 1996, p.160*). It can also be concluded from the information provided by the Senate that the Contested Norm shall be applied and interpreted, among the rest, in conjunction with Article 110 of the Satversme and the UN Convention of the Rights of the Child (*see: case materials, pp. 94*).

In the "White Paper" elaborated in 2002 by the European Committee of Experts on Family Law of the Council of Europe it has been emphasized that, firstly, it is in the child's interests to establish paternity at birth and, secondly, to grant paternity for the rest of the time [*see: „White Paper" On Principles Concerning the*

Establishment and Legal Consequences of Parentage, Committee of experts on Family Law (CJ-FA) of the Council of Europe, 15.01.2002., Part A: http://www.coe.int/family]. Up to the moment when the paternity is established, the child is denied different rights or he or she cannot fully exercise the rights, and this fact is in breach of his or her interests. For instance, paternity may play a great role when establishing citizenship of a child, his property rights, including social rights, as well as other legal relations.

10. The Applicant holds that the restriction of the right to a fair court included in the Contested Norm does not comply with Article 4 of the Convention, which, according to the Applicant, does not provide for any term to contest paternity previously recognized on voluntary basis. The abovementioned article of the Convention provides that voluntary recognition of paternity cannot be contested or appealed against, except for cases when contesting or appealing is permitted by a national law. Likewise, contesting or appealing is permissible if the person, who wants to recognize or has recognized paternity of a child, is not the biological father of the child.

The Constitutional Court admits that interpretation of the right to a fair court established in Article 92 of the Satversme can be affected by the norms of human rights included on international documents on human rights. Such interpretation is of great importance if the respective documents cover a particular area of human rights. By means of it, it is possible to concretize the scope of the respective fundamental rights and to establish their content more precisely. Consequently, to better reveal the content of the fundamental rights established in Article 92 of the Satversme, the Article shall be interpreted, in the case under review, in conjunction with Article 4 of the Convention.

Latvia became a party to the Convention on 15 May 2003 when the Saeima adopted the Law "On the European Convention on the Legal Status of the Children Born out of Wedlock". Latvia has not attached any disclaimers to the Convention. Therefore it can be concluded that Latvia has undertaken to fully implement all norms included into the Convention.

10.1. The Applicant indicates that Article 4 of the Convention does not

establish any term, within which a person who is not the biological father of the child, could contest paternity previously recognized on voluntary basis. On the other hand, the Saeima regard such interpretation as ungrounded. The Ministry of Justice, the Ministry of Children, Family and Integration Affairs, the Ombudsman and I. Lībiņa-Egner neither agree with such interpretation of Article 4 of the Convention offered by the Applicant and draw attention to admissibility of the term of two years established in the Contested Norm, as well as correlation of this Norm with the Convention (*see: case materials, pp. 82, 83, 87, 88, 96, 97, 1091 and 104 – 106*).

10.2. When establishing the meaning of Article 4 of the Convention, it is necessary to take into consideration Article 31 of the Vienna Convention on the Law of Treaties (hereinafter – the Vienna Convention), which regulates the provisions for interpreting general international treaties, and, in the case of necessity, also Article 32 thereof that provides for supplementary means of interpretation of international treaties. Both these norms are generally accepted norms of customary law in the area of interpretation of international treaties (*see*: *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission Finalized by Martti Koskenniemi, International Law Commission, Fifty-eighth session, A/CN./L.682, 13 April 2006, p.101*). Article 31 of the Vienna Convention includes three separate principles that should be observed when interpreting international treaties. Firstly, a treaty shall be interpreted in good faith and in accordance with the principle *pacta sunt servanda*. Secondly, a treaty shall be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (*see, e.g.: Advisory Opinion on the Competence of the General Assembly for the Admission of a State to the United Nations, I.C.J. Reports 1950, p.8*). This means that the treaty should be assess jointly rather than each norm or phrase separately [*see, e.g.: Competence of the ILO to Regulate Agricultural Labour, P.C.I.J. (1922), Series B Nos. 2 and 3, p.23; United States Nationals in Morocco case, I.C.J. Reports 1952, pp. 183, 184, 197, 198*]. This helps ensuring efficiency of the treaty and reach its objectives [*see: Advisory Opinion on Minority Schools in Albania, P.C.I.J. (1935), Series A/B No. 64 p. 20*].

10.3. It follows from Article 4 of the Convention that a person that has

recognized paternity of a child but is not the biological father of the child shall be granted the right to contest paternity.

It cannot be *expressis verbis* concluded from the grammatical text of the Convention that the Member State to the Convention would not have the right to establish, in its legal acts, restriction for the term, within which a person who is not the biological father of the child could contest paternity previously recognized on voluntary basis. As it is established in the Convention, objections regarding voluntary recognition of paternity can be presented, respectively, recognition of paternity can be contested only if the person who wants or has recognized paternity of the child is not the biological father of the child. The Council of Europe indicates in the Explanatory Report to the Convention on the Legal Status of Children Born out of Wedlock that the question of those persons or authorities who may oppose or contest a voluntary recognition is not dealt with by the Convention (*see: Convention on the Legal Status of Children Born out of Wedlock, Explanatory Report, para. 25, http://conventions.coe.int/Treaty/EN/Reports/HTML/085.htm).* This issue is left to the internal law.

Consequently, the legislator has the right to establish the possibility to contest recognition of paternity by establishing a respective circle of persons, as well as to prohibit a certain group of persons to contest paternity for the purpose of protecting and ensuring the interests of the child in certain cases. The Legislator must assess the range of persons who could be conferred or denied such rights [*see: „White Paper" On Principles Concerning the Establishment and Legal Consequences of Parentage, Committee of experts on Family Law (CJ-FA) of the Council of Europe, 15.01.2002., Part A: http://www.coe.int/family*].

However, it must be taken into consideration that it is possible to verify validity of grammatical interpretation of a norm of an international treaty only by assessing the context and objectives of the treaty.

10.4. To establish the objective of a treaty, it is necessary to consider its preamble among the rest. It is generally accepted that a preamble is a substantial part of a treaty that is applied when interpreting the treaty (*see: Draft Articles on the Law of Treaties with commentaries, 1996, United Nations, 2005, p. 221*). The Constitutional Court has also recognized that preambles of international treaties play a great role

in interpretation of international treaties (*see: Judgment of 29 November 2007 by the Constitutional Court in the case No 2007-10-0102, Para 76.1*).

Preamble of the Convention provides:

"[..] Noting that in a great number of member States efforts have been, or are being, made to improve the legal status of children born out of wedlock by reducing the differences between their legal status and that of children born in wedlock which are to the legal or social disadvantage of the former; [..]

Believing that the situation of children born out of wedlock should be improved and that the formulation of certain common rules concerning their legal status would assist this objective and at the same time would contribute to a harmonisation of the laws of the member States in this field [..]."

Important conclusions can be made from the Preamble of the Convention. First, legal differences between the children born out of wedlock and those born in wedlock, the first have a worse social situation if compared to the latter. Second, the State has the duty to reduce or eliminate, within limits, all such differences. When assessing the Contested Norm in this context, it can be concluded that it provides legal certainty and certain social stability to the children born out of wedlock. If it were assumed that the person having recognized paternity on voluntary basis could contest the recognition of paternity, then legal and social security of a child would become relative and unpredictable as to its legal consequences. Furthermore, each time when a person having recognized paternity on voluntary basis would want to contest the recognition repeatedly, this would cause problems of social and legal nature to the child. However, this would be in breach of what has been established in the Preamble of the Convention.

Consequently, the Constitutional Court has no reason to hold that the term of two years established in the Contested Norm is not compatible with the aim of the Convention, which is included in the Preamble.

10.5. With the view to establish the content of Article 4 of the Convention, it is necessary to take into account the context of validity of the Convention. It is possible establish the context of validity of the Convention from the entire Convention in general, and this is as follows: It is necessary to assimilate, within limits, the legal situation of the children born out of wedlock with that of the children born

in wedlock. This is clearly indicated in the Explanatory Report to Article 8 of the Convention (*see: Convention on the Legal Status of Children Born out of Wedlock. Explanatory Report.*
http://conventions.coe.int/Treaty/EN/Reports/HTML/085.htm).

A situation when a person having recognized paternity on voluntary basis would have the right to decide for an unlimited period of time after he has found out about circumstances precluding paternity whether to contest paternity previously recognized on voluntary basis would be in breach of the context of the Convention. In such case, the legal and social situation of the child born out of wedlock would be unstable and thus it would be less favourable if compared to the legal situation of the child born in wedlock.

10.6. According to the third part of Article 31 of the Vienna convention, any subsequent practice in the application of the treaty, as well as any relevant rule of international law applicable in the relations between the parties shall be taken into account, together with the context [*see, e.g.: Competence of the ILO to Regulate Agricultural Labour, P.C.I.J. (1922), Series B, No. 2, p.39; Corfu Channel case, I.C.J. Reports 1949, p.25*].

When considering the case-law of different States that are not a party to the Convention regarding contesting of paternity previously recognized on voluntary basis, the Court concludes that case-law of the States differs. For instance, Section 82.1 of the Family Law of Croatia provides that recognition of paternity can be contested within the time period of six month from the date when the person has found out about circumstances precluding paternity, but no later than after the child has reached the age of seven. Under the first part of Section 93 of the Family Code of Slovakia, the term for contesting paternity constitutes three years. Chapter 7 of the Family Law of Estonia and Section 136 of the Civil Code of Spain provides that the term for contesting paternity shall be one year. The ECHR has also concluded in its case-law that the Contacting States' legislation on contesting paternity has no universally adopted standard (*see, e.g.: Judgment of the ECHR in the case Shofman v. Russia, no. 74826/01, para. 37, 38; 24 November 2005*). Therefore it can be concluded that the case-law of the states differs, and the international law does not provide for

any particular term that should be observed when contenting paternity recognized on voluntary basis.

The Constitutional Court has already recognized that legal regulation of other states, when solving separate issues of the Latvian legal system, can not be directly applied, apart from the cases established by law. In the analysis of comparative rights, one has to take into account the functional context (*see: Judgment of 8 June 2007 by the Constitutional Court in the case No 2007-01-01, Para 24.1*). Likewise, in the survey on modernization of the chapter on Family Law of the CL it has been concluded that transfer of the rights to contest to a certain circle of person is the issue left to the national legislation of each state, which is influenced by the historical development of the State and the experience in solving of the particular question (*see: Conclusion No. 58 of the Survey on Family Law, Modernization of the Chapter "Family Law" of the Civil Law, http://www.tm.gov.lv/lv/ministrija/imateriali/petijumi.html)*. However, it should be taken into consideration that the aim of the international treaty is to approximate national legislations within limits by ensuring protection of the rights of a person at a certain level in all Member States of the Council of Europe.

Consequently, the Constitutional Court must carry out a special assessment of the case-law of the Member States regarding establishment of the terms for contesting paternity after coming into force of the Convention.

Also when assessing legal regulation of the Member States to the Convention regarding contesting of voluntarily recognized paternity, it is not possible to make a general and unequivocal conclusion that would serve as evidence for harmonisation of national legislation in this respect. The States have adopted or continue applying different legal acts regarding contesting of paternity previously acknowledged on voluntary basis. Some of the States provide for the term for contesting of voluntarily recognized paternity: six months according to Section 57 of the Family Law of Check Republic, one year according to the fourth part of the Civil Code of Lithuania and Section 80.1 of the Law on Family and Guardianship of Poland, and Section 260.c of the Civil Law of Swiss; three years according to Section 339 of the Civil Code of Luxembourg. Likewise, circumstances that serve for establishment of the beginning of the abovementioned term differ in the States. It is also possible to conclude

that in certain States the term has not been established at all or the term of it is supplementary restricted by providing for the age of the child, which is not the date when the persons finds out about circumstances precluding paternity. In the result of summarizing the case-law of the States, it is not possible to make a general and unequivocal conclusion.

Taking into consideration the fact that the content of Article 4 of the Convention has been established by applying provisions for interpretation international law, the Court does not have to apply supplementary means of interpretation.

Consequently, the Contested Norm is not in breach of Article 4 of the Convention and Article 92 of the Satversme. The Constitutional Court has no reason to hold that the legislator, when adopting the Contested Norm, would have elaborated such legal regulation that would restrict the rights of a person, who has recognized paternity but then has decided to contest it, to a fair court in a non-proportional manner

11. Article 96 of the Satversme provides among the rest that everyone has the right to inviolability of his or her private life. The Applicant holds that the rights of a child to private life are not priority if compared with the rights of the man who contests paternity previously recognized on voluntary basis to private life.

When interpreting the right to private life guaranteed in Article 96 of the Satversme, the Constitutional Court has indicated that these rights could cover different aspects. It protects the physical and moral integrity, honor and reputation, use of person's name and identity, personal data of a person. The right to private life means that the individual has the right to its private home, the right to live as he likes, in accordance with his nature and wish to develop and improve the personality, tolerating minimum interference of the state or other persons. The right includes the right of an individual to be different, retain and develop virtues and abilities, which distinguish him from other persons and individualizes him (*see: Judgment of 26 January 2005 by the Constitutional Court in the case No 2004–17–01, para 10*).

The right to inviolability of private and family life are guaranteed also in Article 8 of the European Convention on Human Rights. The ECHR has recognized that the right to inviolability of family and private life include the right to

establish and develop relations with other persons (*see, e.g. Judgments in the following cases of the ECHR: Niemietz v. Germany, judgment of 16 December 1992, Series A no. 251-B, para 29; Perry v. the United Kingdom, judgment of 17 July 2003, Reports of Judgments and Decisions 2003-IX, para 36; Biriuk v. Lithuania, judgment of 25 November 2008, application nr. 23373/03, para 34).* On the other hand, the right to family life does not mean the right to maintain relations with the members of the family. The ECHR has reiterated that an essential element of family life is the possibility of the children and the parents to enjoy presence of one another (*see, e.g. Judgments in the following cases of the ECHR: Berrehab v. the Netherlands, judgment of 21 June 1988, Series A no. 138, para. 23; X v. Croatia, judgment of 17 July 2008, application no. 11223/04, para. 3*).

11.1. The argument of the Applicant regarding the fact that the Contested Norm restricts his rights to private life without reason is at a certain extent related with the negative aspect of this right. Based on such understanding of private life, a person should be conferred the right to private life and the right to contest paternity recognized on voluntary basis and without reason, according to the point of view of the person. Namely, the Contested Norm prohibits ceasing maintaining of undesirable family relations or similar relations with the same social bonds with a child whose paternity has been recognized on voluntary basis.

The Constitutional Court has already indicated that the objective of the restriction included in the Contested Norm is observance of the rights of the child. Encouraging of voluntary recognition of paternity (accordingly – decrease of the possibilities of opposing or contesting of voluntary recognition of paternity) is in conformity with the rights and freedoms of the child and promotes the protection of the interests of the child, as it improves the status of children, born out of wedlock and balances the legal status of children born out of wedlock and that of the children born of a marriage. The prohibition to oppose voluntary recognition of paternity is necessary to protect the rights of the child (*see: Judgment of 11 October 2004 by the Constitutional Court in the case No 2004-02-0106, Para 13.2*).

11.2. Of course, it is not possible to question the fact that voluntarily recognized paternity affects the private life of the man having recognized it. However, along with such recognition, the private life of the child is also affected for a long term.

The state is obligated to protect both these rights, taking into account the special area of regulation of the rights of the child. The rights of the person having recognized paternity of voluntary basis are protected in a way that, according to the second part of Section 156 of the CL, he is conferred the rights to contest recognition of paternity within the period of two years starting from the date when he has found out about circumstances precluding paternity. However, the rights of the child are protected in a way that after the expiry of the abovementioned term certain legal stability and predictability sets in the relations between the child and the person having recognized paternity. Consequently, the Constitutional Court has no reason to hold that balancing of the abovementioned rights, when establishing term for contesting of paternity recognized on voluntary basis, would be arbitrary and would restrict the rights of the Applicant to private life in a non-proportionate manner.

Moreover, the ECHR has recognised that in the case when, according to Article 8 of the European Convention on Human Rights, the rights of parents and those of a child are being assessed, the rights of the child shall prevail. If it is necessary to assess the interests of the parties, then those of the childe shall prevail (*see: Judgment of the ECHR in the case Yousef v. the Netherlands, no. 33711/96, para. 73, ECHR 2002-VIII).*

Moreover, it is necessary to take into consideration the fact that, under Item 5 of Section 16 of the Law on the Orphan's Court, the Orphan's Court has the right to submit a statement of claim at the court in the child's interests also regarding contesting of paternity previously recognized on voluntary basis. The Orphan's Court has the rights to exercise such rights in case if it holds that contesting of paternity is in the child's interests. Exercise of such right depends on the considerations of usefulness made within the framework of the freedom of action conferred to the Orphan's Court. Thus Item 1 of Section 17 of the Law on Orphan's Court is implemented and the rights of the child are being protected. Consequently, the legislator has provided for a supplementary mechanism for protection of the rights of the child in the case of necessity.

Consequently, the Constitutional Court has no reason to hold that the Contested Norm, when establishing the term for contesting paternity previously recognized on voluntary basis, restricts the rights of the person

having recognized paternity to private life.

12. The legal status of children born out of wedlock is characterized by the stability of legal family relations based on the Law. Such Stability creates preconditions for a child to be ensured with constant care, social and other kind of guarantees (*see, e.g.: Section 177 of the CL*). However, voluntary recognition of paternity regarding children born out of wedlock ensure them with a similar legal stability if compared with that of children born in wedlock.

The Constitutional Court holds that the term established in the second part of Section 156 of the CL, which is two years from the date when the person has found out about circumstances precluding paternity, is sufficient for a person to be able to assess objectively his decision of possible contesting of paternity. However, the date when the abovementioned term of two years sets in is established by the court of general jurisdiction based on the evidence of the case under consideration. Moreover, it is also necessary to take into account what has been established in the first part of Section 156 of the CL, namely, a court may declare an acknowledgement of paternity null and void only if a person who has acknowledged that a child is his, cannot be the natural father of the child and he has recognised the child as his as a result of mistake, fraud or duress

Although it has not been *expressis verbis* indicated in the application, it still follows from the application that the Applicant, in fact, does not agree with the opinion of the court of general jurisdiction regarding the date when the term for contesting paternity has set in. Namely, it follows from the judgments that this date is 4 October 2004 when a judgment on recovery or allowance was prepared. It can be concluded from this judgment that the Applicant has not recognized paternity regarding the child, in favour of whom an action was brought regarding recovery of allowance. Since the action regarding contesting of paternity was brought on February 2007, the term established in the Contested Norm has expired according to the decisions of the courts. However, according to the Applicant, the term should be calculated as from autumn of 2006 when he has found out about the circumstances precluding paternity.

The Constitutional Court indicates that, first of all, it falls within its jurisdiction to assess constitutionality of the particular Contested Corm or legal act.

The area of authority of the Constitutional Court is established in Article 85 of the Satversme, as well as in Article 1 and Article 16 of the Constitutional Court Law. Assessment of application of norms does not fall within the scope of responsibility of the Constitutional Court (*see: Judgment of 2 June 2008 by the Constitutional Court in the case No 2007-22-01, Para 18.1*).

Likewise, the Constitutional Court does not have the right to reassess the process of assessment of evidence made by the court of general jurisdiction as to review the result of the process. It falls within the jurisdiction of the court of general jurisdiction to decide on admissibility and applicability of evidence, as well as to provide its assessment in accordance with procedural legal norms.

The circumstances mentioned in the second part of Section 156 of the CL that preclude paternity, according to Item 5 of the Second part of Section 128 of the Civil Procedure Law, shall be indicated by the applicant, whilst assessment of these circumstances does not fall within the jurisdiction of the court of first instance or that of the appellate instance court (*see: case materials, information provided by the Senate, pp. 92*). The term established in the second part of Section 156 of the CL is calculated from the moment when the person having recognized paternity, the trustee or the mother of the child "have found out about the circumstances that preclude paternity". Consequently, the freedom of action regarding the preconditions on setting in of the term established in the norm is granted to the court of general jurisdiction when it examines a particular case.

Although in certain cases it is possible that the general wording "have found out about the circumstances that preclude paternity" used in the Contested Norm could be applied in a comparatively non-consistent manner based on the principle of legal certainty, the Constitutional Court does not have the right to reassess the decision provided by the court of general jurisdiction regarding the date when the term established in the Contested Norm sets it. Having established problems in application of the respective norm, it is possible to elaborate recommendations regarding interpretation of effective legal norms according to the Law "On Judicial Power, Sections 49 and 49.[1]. The legislator, also having established that there are problems when applying a particular legal norm, can take a decision to establish a more detailed regulation in the respective norms of the CL regarding the beginning of

calculation of the abovementioned term. The Constitutional Court, according to the authority granted by the Constitution and the Constitutional Court Law, has not been conferred the right to initiate legislation. Neither it has been conferred the right to assess lawfulness of decisions taken by the court of general jurisdiction.

The Constitutional Court

Based on Articles 30 – 32 of the Constitutional Court Law

h o l d s :

The words "within two years calculated from the day when they have found out about the circumstances that preclude paternity" of the second part of Section 156 of the Civil Law comply with Article 92 and Article 96 of the Satversme of the Republic of Latvia.

The Judgment is final and not subject to appeal.

The Judgment comes into force as on the date of publishing it.

Presiding Judge G. Kūtris